*THE HON'BLE SRI JUSTICE G. BIKSHAPATHY

AND

*THE HON'BLE SRI JUSTICE CH.S.R.K. PRASAD

+WRIT PETITION No.17941 of 2004

%TWENTY SEVENTH DAY OF OCTOBER, TWO THOUSAND FOUR

Challa Venkateswara Rao S/o Lakshminarayana
R/o Ambedkar Colony, Kodad, Nalgonda District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Krishna District at Machilipatnam.
2 The Government of A.P., rep by Chief Secretary, Secretariat, Hyderabad.
3 The Superintendent, Central Prison, Rajahmundry.

.....RESPONDENTS

! FOR THE PETITIONER: SRI C.PADMANABHA REDDY, Senior Counsel

for SRI C.PRAVEEN KUMAR, Advocate.

^ FOR THE RESPONDENTS: THE ADVOCATE GENERAL

< GIST:

>HEAD NOTE

?1. 1994(3) ALR 467 (DB).

2. 1997(2) ALT (Crl) 146 (DB) (AP)

3. AIR 1974 SC 2154.

4. (1988) 1 SCC 296.

5. AIR 1994 SC 165.

6 WP.No.16919/2004, dt.7.10.2004.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION NO : 17941 of 2004

Between:

Challa Venkateswara Rao S/o Lakshminarayana
R/o Ambedkar Colony, Kodad, Nalgonda District.

..... PETITIONER

AND

1 The Collector and District Magistrate, Krishna District at Machilipatnam.
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.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Habeas Corpus under Article 226 of the Constitution of India directing the respondents to produce Sri Gunja Venkata Narsaiah @ Venkata Narsi before this Hon'ble and he may be ordered to be released forthwith after declaring that his detention is illegal and void.

For the Petitioner: MR.C.PADMANABHA REDDY, Senior Counsel

For MR.C.PRAVEEN KUMAR, Advocate.

For the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORAL ORDER: (By GB.J.)

The order of detention passed by the 1st respondent-The Collector and District Magistrate, Krishna District at Machilipatnam, dated 21.8.2004 is assailed in this Writ Petition.

2. The brother-in-law of the petitioner viz., Gunja Venkata Narasaiah alias Venkata Narsi, hereinafter referred to as the detenu, was detained on the ground that he was a 'Bootlegger' within the meaning of Section 2(b) of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/86) (for short the Act) and that he was acting in a manner prejudicial to the maintenance of public order viz., illicit distillation of liquor which was in his possession was found to be unfit for human consumption and injurious to health.

3. It is the contention of the learned Senior Counsel Mr.C.Padmanabha Reddy appearing for the detenu that the order of detention is not sustainable in law. Apart from various contentions, he raises a formidable contention that the Chemical Examiner's Report did not specify the permissible limits of three components of the liquor, viz., Ethyl Alcohol, Acidity and Fusel Oil. Even though it was mentioned as 'positive' in the Chemical Examiner's Report, the Report did not say that it exceeded the permissible limits and in support of his contentions he relies on the decision of a Division Bench of this Court reported

in BOYA CHINNA SUBBARAYUDU vs. THE COLLECTOR AND DISTRICT MAGISTRATE, KURNOOL AND OTHERS[1] and followed by a subsequent decision reported in SMT.E.NOOKARATNAM, NELLORE vs. THE COLLECTOR AND DISTRICT MAGISTRATE, NELLORE AND OTHERS[2] and also the order in Writ Petition No.16919 of 2004, dated 7.10.2004. Thus, the learned Senior Counsel would submit that inasmuch as the permissible limit has not been mentioned in the Report, it vitiates the detention order. He also makes his submissions on other aspects of the detention order, but, however, we find it necessary to consider this aspect before proceeding with the other contentions raised.

4. On the other hand the learned Special Government Pleader representing the learned Advocate General submits that the order of detention is quite legal and valid inasmuch as it is stated that it is injurious to public health and that the Analyst Report also clearly specified that the sample was illicitly distilled liquor injurious to health. In such an event, satisfaction of the detaining authority is sufficient to sustain the order of detention. He also refers to the decisions of the Supreme Court reported in H.SAHA vs. STATE OF WEST BENGAL[3], K.ARUNA KUMARI vs. GOVERNMENT OF A.P. AND OTHERS[4] and MRS.U.VIJAYALAKSHMI vs. STATE OF TAMILNADU[5].

5. Before going to consider the contentions of the learned Senior Counsel, we find it appropriate to extract the grounds of detention order annexed to the order of detention, dated 21.8.2004, which reads thus—

> "GROUNDS FOR DETENTION OF SRI GUNJA VENKATA NARSAIAH ALIAS VENKATANARSI SON OF LAKSHMAIAH AGED ABOUT 33 YEARS RESIDENT OF MITTAGUDEM IN JAGGAIAHPETA TOWN KRISHNA DISTRICT UNDER THE PREVENTION OF ANDHRA PRADESH PREVENTION OF DANGEROUS ACTIVITIES OF BOOT LEGGERS, DACOITS, DRUG OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND LAND GRABBERS ACT, 1986.
>
> ********
>
> You, Mr.Gunja Venkata Narsaiah alias Venkata Narsi son of Lakshmaiah, aged about 33 years, resident of Mittagudem in Jaggaiahpeta town in Krishna District are a bootlegger within the meaning of Section 2(b) of Andhra Pradesh Prevention of

Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, for habitually indulging in clandestine possession, transportation and sale/distribution of illicitly distilled liquor in contravention of the provisions of Andhra Pradesh Prohibition Act, 1995 and thereby acting in a manner prejudicial to the maintenance of public order. You have been indulging in clandestine business by possession, transportation and sale/distribution of Illicitly Distilled Liquor, which is unfit for human consumption and injurious due to presence of acids and thereby creating situation which are causing feeling of insecurity among the public and widespread danger to public health and have thus been disturbing public order. These illegal activities of yours constitute offenders under Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986).

HISTORY & INTRODUCTION:

Previously i.e., from the date 12.5.99 to 6.11.2002 there are 6 cases registered against you in the Crime Numbers 1) 31/98-99 (2) 95/2000-01, (3) 266/2000-01, (4) 317/2000-01, (5) 986/2001-02 and (6) 486/2002-03, of the Prohibition and Excise Station Jaggaiahpeta for having been found in possession, transportation and sale of 2 litres, 5 litres, 10 litres, 5 litres, 2 litres and 2 litres of Illicitly Distilled Liquor respectively. In all the above cases you were sent for judicial custody and released on bail. Charge sheets were also filed in all the cases in the Court of Hon'ble Judicial First Class Magistrate, Jaggaiahpeta and trial were commenced. In crime No.31/98-99 after completion of trial you were convicted and released on 23.8.2003 by the Hon'ble Judicial First Class Magistrate, Jaggaiahpeta under Probation of Offenders Act, 1958 by taking a bond from you to main Good Behaviour as per the procedure in the Section 248(2) Cr.P.C. The following are the grounds for your detention:

GROUNDS FOR DETENTION:

On 9.9.2003 at about 4-00 PM the Prohibition and Excise Sub-Inspector, Jaggaiahpeta, Krishna District along with his staff arrested you for illegal possession, transportation and sale/distribution of 10 litres of Illicitly Distilled Liquor in Mittagudem in Jaggiahpeta town, under cover of a special report drafted at the scene of offence as no mediators came forward and a sample was drawn for analysis. A case was registered against you at Proh. & Excise Station, Jaggaiahpeta in crime No.395/2003-04 dated 9.9.2003 under Section 7-A r/w 8(e) of A.P. Prohibition (amendment) Act, 1997. You were sent for judicial custody and

later you were released on bail. The sample taken from the seized property sent to Chemical Laboratory, Kakinada. The Chemical Examiner, Kakinada who analysed the sample opined that the sample was Illicitly Distilled Liquor and injurious to public health due to presence of Fusel Oil and Acids, and therefore unfit for human consumption. The case was charge sheeted and it is under trial in the Hon'ble Judicial First Class Magistrate Court, Jaggaiahpeta.

On 9.11.2003 at about 3.30 PM, the Prohibition and Excise Sub-Inspector, Jaggaiahpeta, Krishna District along with his staff arrested you for illegal possession, transportation and sale/distribution of 5 litres of Illicitly Distilled Liquor in Mittagudem in Jaggaiahpeta town, under cover of a special report drafted at the scene of offence as no mediators came forward and a sample was drawn for analysis. A case was registered against you at Proh. & Excise Station, Jaggaiahpeta in crime No.617/2003-04 dated 9.11.2003 under Section 7-A r/w 8(e) of A.P. Prohibition (amendment) Act, 1997. You were sent for judicial custody and later you were released on bail. The sample taken from the seized property sent to Chemical Laboratory, Kakinada. The Chemical Examiner, Kakinada who analysed the sample opined that the sample was Illicitly Distilled Liquor and injurious to public health due to presence of Fusel Oil and Acids, and therefore unfit for human consumption. The case was charge sheeted and it is under trial in the Hon'ble Judicial First Class Magistrate Court, Jaggaiahpeta.

On 22.6.2004 at about 4.30 PM, the Prohibition and Excise Sub-Inspector, Jaggaiahpeta, Krishna District along with his staff while conducting patrolling, arrested you for illegal possession, transportation and sale/distribution of 10 litres of Illicitly Distilled Liquor in Jaggaiahpeta town, under cover of a special report drafted at the scene of offence as no mediators came forward and a sample was drawn for analysis. A case was registered against you at Proh. & Excise Station, Jaggaiahpeta in crime No.201/2004-05 dated 22.6.2004 under Section 7-A r/w 8(e) of A.P. Prohibition (amendment) Act, 1997. You were sent for judicial custody and later you were released on bail. The sample taken from the seized property sent to Chemical Laboratory, Kakinada. The Chemical Examiner, Kakinada who analysed the sample opined that the sample was Illicitly Distilled Liquor and injurious to public health due to presence of Fusel Oil and Acids, and therefore unfit for human consumption. The case was charge sheeted and it is pending on the file of the Hon'ble Judicial First Class Magistrate Court, Jaggaiahpeta.

> On 10.7.2004 at about 7.00 AM, the two Prohibition and Excise Sub-Inspectors, Enforcement Wing, Vijayawada, Krishna District along with their staff while conducting raids, arrested you for illegal possession, transportation and sale/distribution of 5 litres of Illicitly Distilled Liquor in Jaggaiahpeta town, under cover of a special report drafted at the scene of offence as no mediators came forward and a sample was drawn for analysis. A case was registered against you at Proh. & Excise Station, Jaggaiahpeta in crime No.254/2004-05 dated 10.7.2004 under Section 7-A r/w 8(e) of A.P. Prohibition (amendment) Act, 1997. You were sent for judicial custody and later you were released on bail. The sample taken from the seized property sent to Chemical Laboratory, Kakinada. The Chemical Examiner, Kakinada who analysed the sample opined that the sample was Illicitly Distilled Liquor and injurious to public health due to presence of Fusel Oil and Acids, and therefore unfit for human consumption. The case was charge sheeted and it is pending on the file of the Hon'ble Judicial First Class Magistrate Court, Jaggaiahpeta".

6. We have also perused the Analyist Report which is placed before us and it contains the following particulars:

> TESTS CONDUCTED
>
> Test for Ethyl Alcohol : Positive
>
> Test for Acidity : Positive
>
> Test for Fusel Oil : Positive

In the remarks column it is stated that the sample is illicitly distilled liquor injurious to health.

7. Earlier a Division Bench of this Court had considered the similar issue in *Subbarayudu's* case (1 supra) and observed as follows:

> "Boot-legger is defined by Section 2(b) in the following terms:
>
> "Boot-legger" means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and the Rules, notifications and orders made thereunder, or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the above mentioned things by himself or through any other

person, or who abets in any other manner the doing of any such thing."

Everyone who answers the description of boot-legger cannot be detained preventively under the Act. The detaining authority must be satisfied that the detention is necessary with a view to preventing the person concerned from acting in any manner "prejudicial to the maintenance of public order" (vide Section 3(1)). The words "acting in any manner prejudicial to the maintenance of public order" are defined by Section 2(a) as meaning "when a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". The explanation to clause (a) of Section 2 says:

"For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia*, if any of the activities of any of the person referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health".

It is therefore clear that a person who is a boot-legger by reason of his indulging in acts in contravention of the provisions of the A.P. Excise Act, the rules and the notifications and the orders made under that Act cannot be detained under Section 3(1) of the Act unless the acts in which he is indulging affect or likely to affect adversely the maintenance of public order. In other words only if the activities of the boot-legger cause "grave or widespread danger to life or public health" he can be detained. If a boot-legger sells illicitly distilled arrack which contains harmful substances, certainly he can be detained on the ground that his activities constitute grave danger to life or public health."

From a reading of the relevant paragraphs of the Excise Manual it is clear that the presence of fusel oil in liquor by itself is not injurious to health. Only when fusel oil is separated from the liquor and consumed in large quantities either by human beings or animals, it will prove injurious. What is the permissible level of the fusel oil is not mentioned in the Excise Manual, nor do we get it from the report of the Chemical Examiner. Unless it is stated in the report of the Chemical Examiner that the seized liquor from the premises of the petitioner contained fusel oil in impermissible limits so as to cause grave or widespread danger to life or public health the detaining authority will not be justified in ordering the detention on the ground that the detenu is acting in a manner

prejudicial to the maintenance of public order.

As regards the seized 'fermented wash' referred to in ground No.1, it is not stated in the grounds that the end product which will ultimately emerge out of the fermented wash will contain fusel oil in impermissible limits and, therefore, the activity of the detenu is prejudicial to the maintenance of public order. As the statutory requirement in this regard has not been satisfied, the order of detention is vitiated.

Unless the grounds of detention specifically advert to the fact that the percentage of the fusel oil found in the seized liquor constitutes a grave or widespread danger to life or public health, it is not open to the detaining authority to order detention under Section 3 of the Act. Since that has not been done, we are constrained to hold that the fundamental right of the detenu under Article 22(5) of the Constitution is violated".

In a subsequent decision in *Nookaratnam's* case the Division Bench again considered subsequent decisions which were rendered in consequence of the decision in *Subbarayudu's* case and held as follows:

"In the light of the above decisions of the Supreme Court, we find that no basis whatsoever is made out on the allegations in the grounds of detention of the petitioner that his various activities of smuggling and selling liquor amount to conduct prejudicial to the maintenance of 'public order'. In the grounds of detention accompanying the order of detention dated 16.11.1996 it was clearly stated that on examination it was found that the liquor dealt with by the petitioner was Indian Made Foreign Liquor. The allegation that Prohibition and Excise Inspector, Nellore received a number of petitions from Stonehousepet, Usmansahebpet and Brundavanam stating that due to sales of liquor by the petitioner, number of galatas occurred in their vicinity and caused nuisance for their families, is vague and no specific incidents were given. Mere allegation that the petitioner's activities amount to bootlegging as defined under Section 2(a) r/w. the explanation and Secition 2(b) of the Act without anything more does not make out or establish that they cause prejudice to the maintenance of public order unless it is shown that such activities are causing or are calculated to cause harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health as per the explanation to Section 2(a) of the Act.

In view of the clear enunciation of the law in the several Division Bench judgments of this Court and, in particular, the observations

of R.Bayapu Reddy, J., speaking for the Division Bench in the case of *K.Syamala* (11 supra), on 19.2.1997 when the matter was argued by the learned Government Pleader Ms.Vijayalakshmi, we asked her as to why damages should not be imposed for payment to the petitioner, and she took time for enabling the learned Advocate General to argue the matter; and that was how he appeared before us for the respondents.

In the light of the above discussion, we find that the detention of the petitioner under the impugned order is bad. The grounds of his detention do not mention that he was dealing with spurious liquor. On the other hand, it was categorically stated that "after examination the C.E., Guntur has opined all the sample bottles were Indian Made Liquor." In all the seven occurrences between 18.2.1996 and 25.8.1996, the petitioner was found with liquor in contravention of the provisions of the Andhra Pradesh Excise Act, 1968 and cases were registered against him and he was arrested and remanded to judicial custody but was later released on bail. It was stated in the grounds dated 16.11.1996 that "the investigation in all the above cases (was) yet to be completed so as to file charge sheet in the Court of law". Thus the petitioner was only alleged to be bootlegging and no other dangerous activities were alleged against him which were "causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health" (see Explanation to Section 2(a) of the Act). Therefore, it cannot be said that the petitioner was "acting in any manner prejudicial to the maintenance of public order" as defined in Section 2(a) read with the Explanation of the Act. We, therefore, set aside the detention order against the petitioner. So holding, we consequently directed by order on 20.2.1997 that the detenu Illuri Jayaram, Son of Ramachandraiah, r/o. Sivalayam Street, Usman Sahebpet, Nellore then in custody at District Jail, Nellore should be released forthwith and directed that the operative portion of the order should be communicated to the 3rd respondent i.e., the Superintendent, District Jail, Nellore for immediate compliance, observing that detailed order would follow. In view of this, no further orders are necessary now".

8. The question that calls for consideration is whether the detention order gets vitiated on account of the deficiency as contended by the learned Senior Counsel for the detenu.

9. In *Subbarayudu's* case (1 supra) the Division Bench referred to paragraph 92

of the Technical Excise Manual, which reads thus—

> "The principal higher alcohols occurring in potable spirits are amyl, butyl and propyl. Others, such as caprice or hexyl, heptyl, octyl, etc., occur in such minute amounts that they need not be considered for practical purposes. These higher alcohols are the chief, components of what is popularly known as fusel oil.... It is thus a very complex mixture Fusel oil is produced chiefly during fermentation. These higher alcohols are so called because in general they have higher densities and boiling points and more complex chemical composition than ordinary or ethylic alcohol. Small proportions of fusel oil are invariable present, being normal products of fermentation, and it is impossible to remove them entirely without destroying in the potable character of spirit. So that it is incorrect to talk of a potable spirit at being "quite free from fusel oil".

From a reading of the above para, it is clear that the potable spirit also not free from fusel oil.

But the only question that falls for consideration is whether the presence of Fusel oil is within the permissible limits. For that purpose it is necessary for the authorities to mention the permissible percentage limits of the components in the spirit, which were sent for examination. The learned Special Government Pleader, however, submits that in the remarks column it is stated that it is injurious to health, it has to be presumed that the contents of fusel oil exceeded the permissible limits. We are afraid we cannot accept the contention on mere hypothesis or surmises or conjectures. When the freedom of a citizen is sought to be curtailed by resorting to preventive detention, it is necessary that there should be material to invoke the provisions contained in Act 1/86. Inasmuch as in the present case the percentage of fusel oil and other items referred to above have not been specified, mere mentioning that it is injurious to health would not meet the requirement of law resorting to preventive detentions. This Court in the Writ Petition No.16919 of 2004 (referred to above) also considered this aspect and observed thus:

> "The detaining authority has drawn an inference that the arrack seized from the possession of the detenu is injurious to health and public safety. There is no material on record to draw such an inference by the detaining authority and, therefore, the detention order suffers from serious infirmity and the same is liable to be set aside".

11. Apart from that, we also find that the quantity seized from the possession of the detenu was in a very small quantity like 5 liters and 10 liters and even the provisions of the Prohibition Act permits compounding the offences if the quantity of liquor is less than 20 liters. In such an event we are also of the considered view that possession small quantity of liquor would not create a ground for feeling of insecurity among the general public or any section thereof or grave or widespread danger to life or public health, and the situation cannot be said to travel beyond the clutches of normal statutory procedures as contained in A.P. Prohibition Act.

12. For the foregoing reasons, we are of the considered view that the order of detention is not sustainable in law. Accordingly the order of detention dated 21.8.2004 is quashed.

13. In the result, the Writ Petition is allowed and the order of detention passed by the 1st respondent-The Collector and District Magistrate, Krishna at Machilipatnam, in Rc.No.2322/2004/C1, dated 21.8.2004 is quashed and the detenu shall be set at liberty forthwith, if he is not required in any other case.

(G.BIKSHAPATHY, J.)

27th October, 2004.

(CH.S.R.K.PRASAD, J.)

SSR

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One Fair copy to the Hon'ble Mr.Justice Ch.S.R.K.Prasad (For His Lordship's kind perusal).

To

1 The Collector and District Magistrate, Krishna District at Machilipatnam.
2 The Chief Secretary, Government of A.P., Secretariat, Hyderabad.
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